REMARKS

Applicant notes the non-statutory double patenting rejection but is puzzled since a terminal disclaimer was submitted along with the response to the first Office Action. Clarification is requested.

Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) and anticipated by Lane '789. Claims 3 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jenks '125. The rejection appears to actually be over Lane in view of Jenks since Lane is used in the Examiner's explanation. Similarly, claim 5 is rejected under 35 U.S.C. 10(a) as unpatentable over Bonanno '584 but applicant believes that the rejection is over Lane in view of Bonanno.

Since Lane is used in all of the rejections it will be considered first.

Preliminarily, note that applicant's invention is limited to a combination **Model** Train Sensor and Signal. Although Jenks and Bonanno relate to model train signals, Lane relates to a train proximity sensor for a full size train. While it is one of the objects of model train enthusiasts to make the model trains as realistic as possible, there are important differences between model trains and real trains some of which are particularly relevant to this invention.

With specific respect to Lane, real trains use complex control systems not found in model trains. The train information system on which Lane relies is an example. As described by Lane, a frequency shift keyed (FSK) radio signal in the 450-460 MHz band is transmitted to send status information such as brake pressure, speed etc. from the locomotive to the rear most car of the train. Lane relies on this system in his proximity detector which does not in fact detect the train at all but instead detects the radio frequency signal transmitted by the train information system. It is clear from a reading of Lane that if the radio signal is not present the proximity detector will not detect the proximity of a train or indicate the presence of a train. Since model railroads do not follow the recommended guidelines, considerations and radio frequency requirements for train information systems, part 12-15 pages 1-45 referred to by Lane, no transmitter is used in model trains and the radio frequency receiver proximity warning system of Lane would be useless for a model train sensor and signal as claimed by applicant.

It would it be impossible to sense a model train using the apparatus described by Lane. While applicant believes that this alone is enough to distinguish applicant's claimed invention over Lane, even if a system like Lane could be used to detect a model train, it doesn't produce the signals required by applicant's claim. Reference to Lane itself clearly demonstrates this. Referring specifically to claim 1, the claim requires that the controller connected to the train proximity sensor activate a green signal when the train proximity sensor indicates the absence of a train and deactivate the green signal and activate a red signal when the train proximity sensor

indicates the presence of a train. In Lane, the green signal is a "power on" LED (col.6 line 32 and col. 5 line 58-59) that is illuminated when DC power is applied to the train proximity detector. It has nothing to do with whether a train is present.

When a carrier signal is detected by Lane's system the green signal remains on and a yellow light emitting diode is illuminated "for indicating the presence of the transmitted train signal for a predetermined period of time" (col 5 lines 50-53). As Lane puts it, the illumination of the yellow LED constitutes a first level alert. Thus, when Lane detects the presence of an RF signal, he illuminates a yellow signal not a red signal and further does not, as required by claim 1, deactivate the green signal.

Furthermore, while Lane has a red signal, it is responsive to the detection of data, not the presence of the train. If an RF signal associated with a train is detected, the yellow signal not the red signal is illuminated. Therefore a train could be present but not transmitting data and the red signal would not be illuminated, the green signal would remain on, and the yellow signal would be illuminated.

In another embodiment of Lane's invention, described at col 8 lines 7-`4, the green LED, in addition to indicating power is alternately flashed with the red LED when data is detected. That is, the yellow LED, as in the previous embodiment is turned on to indicate the detection of a carrier and therefore of a train. When data is detected the red and green LEDs are alternately blinding (sic blinking) to indicate the presence of data. Thus, the green LED is illuminated all the time that power is present but is changed to an alternate blinking status with the red LED when data is detected. It is not turned off when a train is present, as claimed.

This arrangement would be useless in a model train signal as described by applicant. As claimed, and for the purpose of simulating an actual track side railroad signal, the red and green signals are illuminated in the manner described to indicate the proximity of a model train. When a train is detected the red signal is illuminated and the green signal is deactivated. When the train is gone the green signal is activated and the red signal is deactivated. The flashing arrangement of red and green signals described by Lane would not simulate an actual railroad signal in any way. The yellow LED which actually indicates the presence of a train in Lane's device would also not be useful. Also, a green signal which is illuminated whenever power is on would provide an erroneous indication in applicant's model train signal.

Neither Bonanno nor Jenks which relate solely to signals for toy trains would be combinable with Lane. They are completely non-analogous. If Lane, which relates to apparatus for passenger vehicles and the like were combined with Jenks or Bonanno the result would be a little toy train signal sitting on the dashboard of a car which would certainly be unusual but not

particularly useful and probably illegal because it would distract a driver and obstruct his vision. Because there is no rational way to combine either Jenks or Bonanno with Lane, applicant respectfully submits that the rejections of claims 3, 5 and 6-9 based on the confirmation should be reconsidered.

Applicant believes that claims 20-30 are rejected only on double patenting grounds. This leaves only claim 4 which is admittedly broader than claim 1. Applicant has amended claim 4 to make it clear that the train proximity sensor is a model train proximity sensor; the safe to proceed signal is a model train safe to proceed signal and the stop signal is a model train stop signal. Since, for the reasons already discussed, the apparatus of Lane is incapable of detecting the proximity of a model train since model trains do not transmit the train information signals that Lane relies on for detection and since Lane neither shows nor suggests activating model train signals, claim 4 distinguishes over Lane. For the reasons already discussed, there is no incentive or even any practical way to combine Lane with either Bonanno or Jenks and therefore dependent claim 6-9 are patentable even if claim 4 is not.

For all of the foregoing reasons, applicant respectfully submits that all of the claims now presented are patentable and accordingly reconsideration and favorable action on the application are requested.

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Respectfully submitted,

Stephen B. Salai, Registration No. 26,990
HARTER, SECREST & EMERY LLP
1600 Bausch & Lomb Place
Rochester, New York 14604
Telephone: 585-232-6500
Fax: 585-232-2152